

IRS - Frequently Asked Tax Questions And Answers

Keyword: Employee - Independent Contractor

12.2 Small Business/Self-Employed/Other Business: Form 1099-MISC & Independent Contractors What is the difference between a Form W-2 and a Form 1099-MISC?

Both of these forms are called information returns. The Form W-2 is used by employers to report wages, tips and other compensation paid to an employee. The form also reports the employee's income tax and Social Security taxes withheld and any advanced earned income credit payments. The Form W-2 is provided by the employer to the employee and the Social Security Administration. A Form 1099-MISC is used to report payments made in the course of a trade or business to another person or business who is not an employee. The form is required among other things, when payments of \$10 or more in gross royalties or \$600 or more in rents or compensation are paid. The form is provided by the payer to the IRS and the person or business that received the payment.

References:

- [Tax Topic 752, Form W-2 - Where, When, and How to File](#)
- [Form W-2 and W-3 Instructions](#)
- [Form 1099-MISC Instructions](#)

How do you determine if a person is an employee or an independent contractor?

The determination is complex, but is essentially made by examining the right to control how, when, and where the person performs services. It is not based on how the person is paid, how often the person is paid, or whether the person works part-time or full-time. There are three basic areas which determine employment status:

- behavioral control
- financial control and
- relationship of the parties

For more information on employer-employee relationships, refer to Chapter 2 of [Publication 15, Circular E, Employer's Tax Guide](#) and Chapter 2 of [Publication 15-A](#) (PDF), *Employer's Supplemental Tax Guide*. If you would like the IRS to determine whether services are performed as an employee or independent contractor, you may submit [Form SS-8](#) (PDF), *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.

Unless you think you were an employee, you should report your nonemployee compensation on [Form 1040, Schedule C](#) (PDF), *Profit or Loss from Business* (Sole Proprietorship), or [Form 1040, Schedule C-EZ](#) (PDF), *Net Profit From Business*. You also need to complete [Form 1040, Schedule SE](#) (PDF), *Self-Employment Tax*, and pay self-employment tax on your net earnings from self-employment, if you had net earnings from self-employment of \$400 or more. This is the method by which self-employed persons pay into the social security and Medicare trust funds.

Generally, there are no tax withholding on this income. Thus, you may have been subject to the requirement to make quarterly estimated tax payments. If you did not make timely estimated tax payments, you may be assessed a penalty for an underpayment of estimated tax. Employees pay into the social security and Medicare trust funds, as well as income tax withholding, through payroll deductions.

If you are not sure whether you are an independent contractor or an employee, complete [Form SS-8](#) (PDF), *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. For more information on employer-employee relationships, refer to Chapter 2 of [Publication 15, Circular E, Employer's Tax Guide](#), and Chapter 2 of [Publication 15-A](#) (PDF), *Employer's Supplemental Tax*

Guide, and [Publication 1779](#) (PDF), *Employee Independent Contractor Brochure*. For information on the tax responsibilities of self-employed persons, refer to Chapter 2 of [Publication 505](#), *Tax Withholding and Estimated Tax*.

References:

- [Publication 505](#), *Tax Withholding and Estimated Tax*
- [Tax Topic 762](#), *Independent Contractor vs. Employee*
- [Tax Topic 407](#), *Business Income*
- [Tax Topic 355](#), *Estimated Tax*

I made some money repairing radios and television sets last year. How do I report this income?

This is self-employment income. A person with income from Self-Employment files [Form 1040, Schedule C](#) (PDF), *Profit or Loss from Business*, or in some cases, files [Form 1040, Schedule C-EZ](#) (PDF), *Net Profit from Business*, to report the profit or loss from the business, and files [Form 1040, Schedule SE](#) (PDF), *Self-Employment Tax*, to figure Social Security and Medicare Tax. Refer to [Tax Topic 407](#), *Business Income*, and [Publication 334](#), *Tax Guide for Small Business*, for additional information. When there is no federal withholding taken out of your self-employment income, you may need to make quarterly estimated tax payments. This is done using a [Form 1040-ES](#) (PDF), *Estimated Tax for Individuals*.

Topic 762 - Independent Contractor vs. Employee

To determine whether a worker is an independent contractor or an employee under common law, you must examine the relationship between the worker and the business. All evidence of control and independence in this relationship should be considered. The facts that provide this evidence fall into three categories – Behavioral Control, Financial Control, and the Type of Relationship itself.

Behavioral Control covers facts that show whether the business has a right to direct or control how the work is done through instructions, training, or other means.

Financial Control covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job. This includes:

- The extent to which the worker has unreimbursed business expenses,
- The extent of the worker's investment in the facilities used in performing services,
- The extent to which the worker makes his or her services available to the relevant market,
- How the business pays the worker, and
- The extent to which the worker can realize a profit or incur a loss.

Type of Relationship covers facts that show how the parties perceive their relationship. This includes:

- Written contracts describing the relationship the parties intended to create,
- The extent to which the worker is available to perform services for other, similar businesses,
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay,
- The permanency of the relationship, and
- The extent to which services performed by the worker are a key aspect of the regular business of the company.

For more information, refer to [Publication 15-A](#) (PDF), *Employer's Supplemental Tax Guide*, or [Publication 1779](#) (PDF), *Independent Contractor or Employee*. If you want the IRS to determine whether a specific individual is an independent contractor or an employee, file [Form SS-8](#) (PDF), *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.